IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

TRISTEN M.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, L.M., AND S.M.,
Appellees.

No. 2 CA-JV 2019-0083
Filed November 4, 2019

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD20150441
The Honorable Laurie B. San Angelo, Judge Pro Tempore

AFFIRMED

COUNSEL

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Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Cathleen E. Fuller, Assistant Attorney General, Tucson
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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

E S P I N O S A, Judge:

¶1 Tristen M. appeals from the juvenile court's order terminating her parental rights to her children, L.M. (born May 2014) and S.M. (born November 2016), on the grounds of neglect under A.R.S. § 8-533(B)(2) and repeated out-of-home placement under § 8-533(B)(11). She argues insufficient evidence supports the grounds for termination and the court's finding that termination was in the children's best interests. We affirm.

¶2 To sever a parent's rights, the juvenile court must find clear and convincing evidence establishing at least one statutory ground for termination and a preponderance of the evidence that terminating the parent's rights is in the child's best interests. *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 32, 41 (2005); *see also* A.R.S. § 8-863(B). We do not reweigh the evidence on appeal; rather, we defer to the juvenile court with respect to its factual findings because it "is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4 (App. 2004). We will affirm the order if the findings upon which it is based are supported by reasonable evidence. *See Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4 (App. 2002). We view that evidence in the light most favorable to upholding the ruling. *See Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 12 (App. 2007).

¶3 In June 2015, the Department of Child Safety (DCS) removed L.M. from Tristen's care. L.M. was adjudicated dependent in August 2015, based on Tristen's inability to properly care for her due to mental health issues and substance abuse, and placed with her maternal grandfather.

¶4 In October 2016, Tristen was permitted to move into the grandfather's home and S.M. was born the following month. In December, S.M. was hospitalized after losing twenty percent of her body weight. She was diagnosed with nonorganic failure to thrive; Tristen had not attended recommended appointments after S.M.'s birth, and was unable to adequately feed or otherwise care for S.M. during her hospital stay, even

with nursing support. DCS took custody of S.M. and placed her in foster care. The following March 2017, S.M. was adjudicated dependent.

¶5 In January 2018, S.M. was returned to Tristen's care, and the dependency as to both children was dismissed in March 2018. About a week later, DCS received a report that S.M. had come to daycare with deep lacerations around both her wrists, which Tristen had attempted to conceal by instructing daycare workers not to remove S.M.'s coat. Tristen explained the lacerations had been caused by hair ties she had used to secure socks to S.M.'s hands to prevent her from scratching her ears due to discomfort caused by numerous ear infections. She admitted leaving the ties in place for at least two days. Although Tristen claimed medical staff had instructed her to use mittens to prevent S.M. from scratching, medical providers denied directing her to do so, and her claim was unsupported by medical records reviewed by DCS. S.M. and L.M. were placed in a foster home. The juvenile court found S.M. and L.M. dependent as to Tristen in May 2018.

¶6 In October 2018, the children moved to terminate Tristen's parental rights, alleging termination was warranted on the grounds of abuse, neglect, removal within eighteen months of having been returned from a prior removal, and time in care. *See* § 8-533(B)(2), (8)(a), (8)(c), 11. After a contested hearing, the juvenile court terminated Tristen's parental rights to both children in June 2019. The court found that the grounds of neglect and prior removal had been proven and that termination was in the children's best interests. This appeal followed.

¶7 Tristen first argues that insufficient evidence supported the juvenile court's neglect finding because the 2018 injury to S.M.'s wrists was "a single act" that was "possibly well intentioned" and DCS did not present medical evidence regarding S.M.'s 2016 diagnosis for nonorganic failure to thrive. Severance is appropriate under § 8-533(B)(2) when a "parent has neglected . . . a child." A parent has neglected a child when the parent is unable or unwilling "to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes unreasonable risk of harm to the child's health or welfare." § 8-201(25)(a).

¶8 This court has concluded that a single incident may not be sufficient to demonstrate neglect, observing that "an isolated instance of a parent's failure to supervise rarely would justify termination of parental rights." *Jade K. v. Loraine K.*, 240 Ariz. 414, ¶¶ 13, 21, n.5 (App. 2016). But Tristen does not cite *Jade K.* and, indeed, cites no authority to support her argument that her conduct is insufficient to support a finding of neglect,

particularly in light of her failure to properly care for S.M. in 2016, resulting in her diagnosis for nonorganic failure to thrive, as well as the fact that the children had been back in her care for a short while before S.M.'s wrist injuries. *See Bennigno R. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 345, ¶ 11 (App. 2013) (claims unsupported by "proper and meaningful argument" warrant summary rejection). And, although Tristen complains that DCS presented no "medical evidence" addressing S.M.'s failure to thrive, she has cited no authority suggesting such evidence was required. *See id.*

¶9 Tristen additionally argues the juvenile court erred by citing *Linda V. v. Arizona Department of Economic Security*, 211 Ariz. 76 (2005), because the facts of that case "are vastly different from those in the instant matter." But nothing in the court's ruling suggests it had concluded the facts of *Linda V.* were similar to this case. It instead cited *Linda V.* for the unchallenged proposition that neglect of one child may support termination of a parent's rights to another child. *See* 211 Ariz. 76, ¶¶ 14, 16 (parents who abuse or neglect a child "can have their parental rights to their other children terminated even though there is no evidence that the other children were abused or neglected").

¶10 And we reject Tristen's similar claim that the court erred by citing § 8-533(C), which permits a court to consider "any substantiated allegations of abuse or neglect committed in another jurisdiction" when considering termination under § 8-533(B). Tristen is correct that no such evidence was submitted. But she has cited no authority, and we find none, concluding that a juvenile court's citation to an inapplicable statute constitutes reversible error absent any indication the court misapplied the law. *See Bennigno R.*, 233 Ariz. 345, ¶ 11. Because the juvenile court did not err in terminating Tristen's parental rights on abuse grounds, we need not address her arguments related to termination under § 8-533(B)(11). *See Jesus M.*, 203 Ariz. 278, ¶ 3 (appellate court need not consider challenge to alternate grounds for severance if evidence supports any one ground).

¶11 Tristen further argues that insufficient evidence supported the juvenile court's finding that termination was in the children's best interests. "[T]ermination is in the child's best interests if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, ¶ 13 (2018). Tristen's arguments are, again, generally unsupported by reference to applicable case law. *See Bennigno R.*, 233 Ariz. 345, ¶ 11.

¶12 She first asserts that the court erred in finding termination was in L.M.'s best interests because there was "no evidence whatsoever that [she] would be endangered or harmed by allowing her relationship with her mother to remain intact." Even if we agreed with Tristen's assessment of the evidence, a best-interests finding may be predicated on a benefit to the child—here, as the court found, the opportunity to be adopted. *See Alma S.*, 245 Ariz. 146, ¶ 13. Nor has Tristen identified any support for her claim the court "appears to have not considered the impact on [L.M.] of losing her sister and her biological family." We presume courts know and follow the law, *see State v. Williams*, 220 Ariz. 331, ¶ 9 (App. 2008), and considered all evidence presented, *Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 18 (App. 2004).

¶13 As to S.M., Tristen contends that the juvenile court should have evaluated her best interests pursuant to A.R.S. § 25-403, apparently because S.M. has been placed with her father.[1] Tristen has cited no authority suggesting we should require a court in a severance proceeding governed by Title 8 to evaluate best interests under Title 25, which governs domestic proceedings. *See Bennigno R.*, 233 Ariz. 345, ¶ 11. Nor can we discern any reason to do so, given that § 25-403 gives guidance on how to evaluate best interests in the context of custody and parenting time, not termination of parental rights.

¶14 Finally, Tristen asserts, for the first time in her reply brief, that the juvenile court improperly permitted the children to file a severance motion. We do not address arguments raised for the first time in reply. *See Marco C. v. Sean C.*, 218 Ariz. 216, n.1 (App. 2008).

¶15 The juvenile court's order terminating Tristen's parental rights to S.M. and L.M. is affirmed.

[1]S.M. was found dependent as to her father in May 2018, but was placed in his care in January 2019. He is not a party to this appeal.